

Florida Medical Malpractice Laws & Statutory Rules

Florida has some unique laws that may limit a patient's options in a medical negligence case.



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If you think that you might have a valid claim for medical malpractice in Florida, a few keys to keep in mind are the deadlines for filing your medical malpractice lawsuit, and the procedural prerequisites for doing so. Read on to learn more about Florida laws that affect medical malpractice cases.

Statutes of Limitations and Award Limits

The "statute of limitations" is a deadline -- [imposed by state law](#) -- before which the person suing (the plaintiff) must file a medical malpractice lawsuit against a [health care](#) provider.

To make matters more complicated, there are often special requirements a plaintiff has to fulfill before he or she can sue for medical malpractice. Failure to take the proper steps could postpone when the suit can be filed and could cause the plaintiff to miss the statute of limitations deadline. Finally, it can often be difficult to determine when the clock started running and what the deadline actually is.

Medical malpractice [damage awards](#) -- in other words, how much money an injured plaintiff can receive in a lawsuit -- are also limited or "[capped](#)" in some states. Both the strict statute of limitations and the damage caps are the result of states' efforts to lower the cost of medical malpractice [liability insurance](#).

The rules affecting all of these issues in Florida are discussed below.

Time Limits to File a Lawsuit

In Florida, you must start the lawsuit within **two years** of discovering the injury ([or when you should have discovered the injury](#)) or, at the latest, **four years** from when the malpractice

occurred. In other words, even if you couldn't have discovered the injury within four years, the case will be thrown out if you sue the health care provider more than four years after he or she caused the injury.

The only exception is for the care provider's fraudulent concealment of the malpractice, i.e. intentionally deceiving you so you don't discover the malpractice. In that event, the statute of limitations is two years from when the injury was finally discovered or seven years from when the malpractice occurred.

The statute of limitations does not apply to a minor if the case is started on or before his or her eighth birthday.

The basic laws for [Florida Medical Malpractice Statute of Limitations](#) can be found at [Fla. Stat. Ann. § 95.11](#).

Effect of Pre-Suit Requirements on Statute of Limitations

In Florida, you are required to serve a notice of intent to sue on the health care provider before you can sue in court, which includes an [affidavit from a medical professional](#) stating that you have a [valid medical malpractice claim](#).

This notice sets in motion a complicated settlement process that lasts 90 days. During those 90 days, the statute of limitations is tolled. If the [health care](#) provider indicates earlier than 90 days that it does not wish to settle, then you have 60 days or the remainder of the statute of limitations to sue, whichever is the longer period of time. You can also get an extra 90 days if you file for an "investigation period" to find a medical expert to investigate your case. However, you cannot extend the statute of limitations with an investigation period if it has already expired.

Florida Medical Malpractice Damages Cap Ruled Unconstitutional

Florida statutes authorize different caps on damages in medical malpractice lawsuits, including a \$500,000 cap on non-economic damages (which includes [compensation](#) for "[pain and suffering](#)") in medical malpractice lawsuits against most health care practitioners, and a \$1,000,000 cap on non-economic damages if the malpractice resulted in death or a vegetative state. ([Fla. Stat. Ann. § 766.118](#).) But in June 2017, the Florida Supreme Court ruled that these caps "arbitrarily reduce damage awards for plaintiffs who suffer the most drastic injuries," and struck down any statutory limits on non-economic damages in medical malpractice lawsuits, holding that they are unconstitutional.



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